

REMARKS

Applicants appreciate the consideration of the present application afforded by the Examiner. Claims 1-26 were pending prior to the Office Action. Claims 20-24 have been canceled through this Reply. Therefore, claims 1-19 and 25-26 are pending. Claims 1, 2, 7, 12, 13, 14, 15, 25, and 26 are independent. Favorable reconsideration and allowance of the present application are respectfully requested in view of the following remarks.

Interview Summary

Applicants appreciate the time afforded by the Examiner and the Primary Examiner in conducting the Interview on May 28, 2009. During the interview, Applicants' counsel discussed the rejection of claims 20-24 under 35 U.S.C. §101, asserting as in prior prosecution that claim 20 is not directed to software *per se*. No definitive agreement was reached.

Regarding the 35 U.S.C. §102(e) rejection of the claims in view of Irie reference: although Applicants' counsel insisted that Irie fails to expressly disclose "extracting a piece of code information corresponding to a code which is possessed on said image from a piece of image data acquired by picking up an image by the image pickup unit", the Examiner and the Primary Examiner continued to respectfully disagree with Applicants' counsels arguments.

No definitive agreement with respect to claim language was reached during the interview.

Claim Rejections - 35 U.S.C. §101

Claims 20-24 stand rejected under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. More specifically, the Examiner alleges that claims 20-24 are directed to "software *per se*" and not one of the statutory classes of invention. Applicants traverse the rejection. However, to expedite prosecution, Applicants have elected to cancel claims 20-24 through this Reply. Applicants respectfully request that the §101 rejection of claims 20-24 is now moot.

Applicants note that the cancellation of claims in this Reply shall not be construed as acquiescence to the grounds of rejection brought forth by the Examiner in the Office Action, and are made merely in the interest of expeditious prosecution. Applicants reserve the right to pursue

any canceled limitation in any future continuation application deriving from the instant application.

Claim Rejections - 35 U.S.C. §102

Claims 1-3, 5-16, and 18-26 stand rejected under 35 U.S.C. §102(e) as allegedly being anticipated by U.S. Pub. No. 2003/0122943 to Irie (“Irie”). Claims 20-24 have been canceled through the instant Reply, rendering the rejection of these claims moot. With respect to the remaining claims, Applicants submit the Examiner has failed to establish a *prima facie* case of anticipation and traverse the rejection.

In order to establish a *prima facie* case of anticipation under 35 U.S.C. §102, the cited reference must teach or suggest each and every element in the claims. *See M.P.E.P. §2131; M.P.E.P. §706.02.* Accordingly, if the cited reference fails to teach or suggest one or more claimed elements, the rejection is improper and must be withdrawn.

The Examiner is relying on Irie to allegedly anticipate the code extraction feature of the claimed invention. As amended, independent claim 1 recites:

1. (Currently Amended) A data storage device having a storage means for storing acquired data in a hierarchical structure, comprising:

an image pickup unit for picking up an image;

an extraction means for extracting a piece of code information corresponding to a code which is possessed on said image from a piece of image data acquired by picking up an image having the code by the image pickup unit; and

a name generation means for generating a folder name or a file name of the acquired data stored by the storage means relating to the data based on the piece of code information extracted by the extraction means, wherein

the acquired data provided with the folder name or the file name is not the image data from which the piece of code information is extracted.

According to the features of the claimed invention, an image pickup unit picks up an image having a code, and an extraction means extracts a piece of code information corresponding to the code that is possessed on said image. For example, in an embodiment of the invention a camera acquires an image as image data, wherein a code is possessed on the acquired image. The extraction means then extracts code information corresponding to the code. Based on the code information, the name generation means generates a folder name or file name relating to acquired data in the storage means, based on the extracted piece of code information. Furthermore, the folder name or file name generated by the name generation means is provided for the acquired data stored in the storage means, not the image data having the code picked up by the image pickup unit.

As supported by the present specification, an object of the present invention is to provide a data storage device capable of extracting code information corresponding to a code from image data obtained by picking up an image including the code, and generating, based on the code information thus extracted, a name of a folder or a file for data stored in a memory. *See, e.g., specification page 4, line 22 – page 5, line 2.* It is clear from claim 1 and the present specification that the image data from which the piece of code information is extracted is not the same as the acquired data stored by the storage means.

Irie fails to expressly disclose extracting code information corresponding to a code possessed on an image having the code and picked up by an image pickup unit. To the contrary, Irie clearly states that the user inputs the desired filename of a tune data file or a sound data file by operating operation switch 209. This input takes place prior to acquiring an image to be associated with the tune or sound data. *See Irie, paragraph 98.* Importantly, the Examiner is interpreting the tune or sound filename designated by the user (which the Examiner interprets as a “code”) to allegedly cover the code of the claimed invention. The tune or sound filename is then included as part of a filename for the image to be subsequently acquired by the camera. However, this “code” from the filename is not a code possessed on an image picked up by the image pickup unit. The “code” in Irie is clearly just the filename of the tune or sound file selected by the user. Thus, Irie does not disclose extracting code information corresponding to a code from an acquired image and does not anticipate the claimed invention.

Furthermore, the Examiner indicates that the "tune code + serial number" and "sound code + serial number" of Irie are used for a filename of a first image, such as "0050001.JPG", and for a filename of a fifth image, such as "0050005.JPG". *See Irie, paragraph 103.* It is clear that the Examiner is interpreting the "serial number" as being "extracted" from the image. For example, the Examiner appears to interpret "0001" as being extracted from the first image and "0005" as being extracted from the fifth image. As such it is apparent that the Examiner is interpreting Irie such that the image corresponding to the serial number is renamed according to the user-selected tune code or sound code in combination with the "extracted" serial number. In other words, Irie discloses that the image ultimately provided with the generated name is the same as the image from which the serial number of the image is extracted. This is in direct opposition to the feature of claim 1, wherein "*the acquired data provided with the folder name or the file name is not the image data from which the piece of code information is extracted*" (emphasis added). Accordingly, Irie fails to teach or suggest all of the claimed limitations of the present invention.

Therefore, at least because Irie fails to teach or suggest each and every claimed element, independent claim 1 is distinguishable from the prior art. Independent claims 2, 7, 12, 13, 14, 15, 25, and 26 recite features comparable to claim 1 at least with respect to the aforementioned limitations and are likewise distinguishable from Irie at least for the reasons presented above. Dependent claims 3, 5-6, 8-11, 16, and 18-19 are also distinguishable from the prior art at least due to their dependence from the independent claims, directly or indirectly. Accordingly, Applicant respectfully requests that the rejection of claims 1-3, 5-16, 18- 19, and 25-26 under 35 U.S.C. § 102(e) be withdrawn.

Claims 4 and 17 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Irie in view of U.S. Patent No. 6,438,320 to Hatanaka ("Hatanaka"). Applicants respectfully traverse.

In this instance, the combination of Irie and Hatanaka fails to teach or suggest each and every limitation of independent claims 1 and 14. As demonstrated above, Irie fails to teach or suggest "*the acquired data provided with the folder name or the file name is not the image data from which the piece of code information is extracted*" as recited in independent claims 1 and 14.

Hatanaka has not been, and indeed cannot be, relied upon to correct at least this deficiency of Irie. Dependent claims 4 and 17 are also distinguishable from the prior art at least due to their dependence from claims 1 and 14, directly or indirectly.

Therefore, Applicants submit that claims 4 and 17 are patentable over the prior art and respectfully request that the rejection of claims 4 and 17 under §103(a) be withdrawn.

CONCLUSION

All objections and rejections raised in the Office Action having been addressed, it is respectfully submitted that the present application is in condition for allowance. Notice of same is earnestly solicited.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John R. Sanders, Reg. No. 60,166 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

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Respectfully submitted,

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